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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,708	01/12/2004	Mark R. Fernald	WEAT0553	9757
36735 7590 12/24/2008 PATTERSON & SHERIDAN, I.L.P. 3040 POST OAK BOULEVARD, SUITE 1500 HOUSTON, TX 77056				
EXAMINER				
HUGHES, JAMES P				
ART UNIT		PAPER NUMBER		
2883				
MAIL DATE		DELIVERY MODE		
12/24/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MARK FERNALD, TREVOR MACDOUGALL,
MARTIN PUTNAM, REBECCA BRYANT,
CHRISTOPHER WRIGHT, MICHAEL ARCAND and
CHRISTOPHER CHIPMAN

Application No. 10/755,708
Technology Center 2800

Mailed: December 23, 2008

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 18, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the

application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, APPEALED CLAIMS

Appellant has not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 1-21 and 23-30. The rejected claims that have not been appealed and/or argued for appeal are claims 13-20.

DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 6, Sept 2007).

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed in this application on August 22, 2007. There is no evidence on the record indicating that the Examiner has

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considered the Reply Brief in accordance with 37 CFR CFR § 41.43(a)(1) and MPEP § 1208, part II.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) enter a paper canceling claims 13-20;
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims;
- 3) consider the Reply Brief filed August 22, 2007 as indicated above; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/tsj

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